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DISTRICT II

April 1, 2015

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You are hereby notified that the Court has entered the following opinion and order:

2014AP2081 In the matter of the guardianship and protective placement of Cheryl D.: Fond du Lac County v. Cheryl D. (L.C. #2013GN49)

Before Brown, C.J., Reilly and Gundrum, JJ.

Cheryl D. appeals from the circuit court's order placing her under a guardianship and protective placement. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE § 809.21 (2013-14).[1] We reverse.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

On September 13, 2013, Fond du Lac County filed petitions for guardianship and protective placement of Cheryl pursuant to WIS. STAT. chs. 54 and 55, respectively. A guardian ad litem was appointed, as well as adversary counsel who demanded a jury trial on Cheryl's behalf. A trial was scheduled for December 5, 2013; however, the circuit court adjourned the matter to allow the County the opportunity to file a summary judgment motion. On February 4, 2014, the court held a hearing on and granted the County's motion for summary judgment and, with that, granted the County's petitions for guardianship and protective placement. Cheryl appeals, raising as her main argument that the circuit court lost competency to proceed on the petition when it failed to hear the petition within ninety days of its filing.

"Whether a circuit court has lost competency to proceed on a matter is a question of law that we review de novo." ***Tina B. v. Richard H.***, 2014 WI App 123, ¶21, 359 Wis. 2d 204, 857 N.W.2d 432.

WISCONSIN STAT. § 54.44(1)(a) requires that "[a] petition for guardianship … shall be heard within 90 days after it is filed." In an unpublished opinion, ***Lipp v. Outagamie Cnty. DHHS***, No. 2011AP152, unpublished slip op. (WI App June 5, 2012), we held that the statute means what it says, that a petition for guardianship must be heard within ninety days; otherwise, the circuit court loses competency to act on the petition. ***Id.***, ¶16. We find this case persuasive. More recently, we further held in ***Tina B.*** that the ninety-day time restriction could not be waived, even if no prejudice was caused by the delay. ***Tina B.***, 359 Wis. 2d 204, ¶¶20, 31.

In this case, there was no evidentiary hearing on the petitions completed within ninety days of their filing, and thus they were not "heard" within the required time frame. *See* ***Lipp***, No. 2011AP152, unpublished slip op., ¶14 (holding that merely beginning the evidentiary

hearing on a petition within ninety days is insufficient; rather, the hearing must be *completed* within that time period). As a result, the circuit court lost competency to act on the petition for guardianship and the court's related order must be reversed. Further, as in ***Lipp***, we also reverse the protective placement order because the placement order "is dependent on the guardianship's now-vacated incompetency adjudication." *See* ***id.***, ¶16; *see also* WIS. STAT. §§ 55.06, 55.075(3). Because we reverse on the basis of lost competency, we need not decide two other issues raised by Cheryl, namely "[w]hether summary judgment is ever appropriate in a guardianship and protective placement proceeding when a proposed ward has demanded a jury trial" and "[w]hether the court had authority to grant summary judgment as to all issues, when the County only moved for 'partial' summary judgment."[2] *See* ***Hegwood v. Town of Eagle Zoning Bd. of Appeals***, 2013 WI App 118, ¶1 n.1, 351 Wis. 2d 196, 839 N.W.2d 111 (we need not address other issues when one is dispositive).

Upon the foregoing reasons,

[2] With regard to the first of these two issues, after considering the entire record and arguments of the parties regarding Cheryl's competency and need for protective placement, the circuit court concluded that "[n]obody has a contrary opinion, other than Cheryl," and granted the County's motion for summary judgment. Cheryl's position is essentially that her testimony as to her competency is precisely what she has a right to have heard by a jury, with the jury making the decision as to her competence.

There are substantial liberty interests at stake with petitions for guardianship and protective placement. *See* ***Jefferson Cnty. v. Joseph S.***, 2010 WI App 160, ¶13, 330 Wis. 2d 737, 795 N.W.2d 450. As Cheryl's guardian ad litem observed during a November 27, 2013 hearing before the circuit court, it is a "slippery slope" when an individual requests a jury trial on petitions for guardianship and protective placement "and we don't afford them an opportunity." *See* ***Shirley J.C. v. Walworth Cnty.***, 172 Wis. 2d 371, 379, 493 N.W.2d 382 (Ct. App. 1992) (where, in the WIS. STAT. ch. 51 involuntary commitment context, we held that "to grant a summary judgment would offend our concepts of due process even when the only evidence presented by the subject of the commitment is a denial of the need for treatment"). The substantial liberty interests involved in this case provide good reason to steer clear of the slippery slope.

IT IS ORDERED that the order of the circuit court is summarily reversed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals